

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service

50 CFR Part 17
 RIN 1018-AB96

170-94

Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Black-footed Ferrets in North-Central Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service), in cooperation with the Montana Department of Fish, Wildlife and Parks, will reintroduce black-footed ferrets (*Mustela nigripes*) into the 11,061 km² (4,237 mi²) North-central Montana Black-footed Ferret Experimental Population Area in north-central Montana. This reintroduction will implement a primary recovery action for this endangered species and also allow evaluation of release techniques. Provided conditions are acceptable, a minimum of 20 surplus captive-raised ferrets will be released in 1994 and annually thereafter for 2 to 4 years, or until a wild population is established. Releases will test ferret reintroduction techniques and, if fully successful, will result in a wild population within 5 years. The north-central Montana population is designated a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended. This population will be managed in accordance with the provisions of the accompanying special rule.

EFFECTIVE DATE: September 19, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the following Service offices:

- Regional Office, Ecological Services, 134 Union Boulevard, Lakewood, Colorado, (303) 236-8189.
- U.S. Fish and Wildlife Service, Billings Suboffice, Ecological Services, 1501 14th Street West, Suite 230, Billings, Montana, (406) 657-6750.

FOR FURTHER INFORMATION CONTACT:

Mr. Ronald Naten, (303) 236-8189, at the Colorado address or Mr. Dennis Christopherson, (406) 657-6750, at the Montana address above.

SUPPLEMENTARY INFORMATION:

Background

The background information included in this rule has been reduced from what was published in the proposed rule to reduce publishing costs. Please refer to the proposed rule published in the

Federal Register on April 13, 1993 (58 FR 19220), for more detailed information.

The black-footed ferret (*Mustela nigripes*) is an endangered carnivore with a black face mask, black legs, and a black-tipped tail. It is nearly 60 cm (2 ft) long and weighs up to 1.1 kg (2.5 lbs). It is the only ferret native to North America.

Though the black-footed ferret was found over a wide area historically, it is difficult to make a conclusive statement on its historical abundance due to its nocturnal and secretive habits. The black-footed ferret's historical range included 12 States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. There is prehistoric evidence of this species from Yukon Territory, Canada, to New Mexico and Texas (Anderson et al. 1986). Although there are no specimen records for black-footed ferrets from Mexico, prairie dogs (*Cynomys* spp.) inhabit Chihuahua (Anderson 1972) and were present as far back as the Late Pleistocene-Holocene Age (Messing 1986). Black-footed ferrets depend almost exclusively on prairie dogs and prairie dog towns for food and shelter (Henderson et al. 1969, Forrest et al. 1985), and ferret range is coincident with that of prairie dogs (Anderson et al. 1986). No documentation exists of black-footed ferrets breeding outside prairie dog colonies. Consequently, it is probable that black-footed ferrets were historically endemic to northern Mexico.

Black-footed ferrets prey primarily on prairie dogs and use their burrows for shelter and denning. There are specimen records of black-footed ferrets from the ranges of three species of prairie dogs: black-tailed prairie dogs (*Cynomys ludovicianus*), white-tailed prairie dogs (*Cynomys leucurus*), and Gunnison's prairie dogs (*Cynomys gunnisoni*) (Anderson et al. 1986).

Widespread poisoning of prairie dogs and agricultural cultivation of their habitat drastically reduced prairie dog abundance and distribution in the last century. Sylvatic plague, which may have been introduced to North America around the turn of the century, also decimated prairie dog populations, particularly in the southern portions of their range. The severe decline of prairie dogs resulted in a concomitant and near-fatal decline in black-footed ferrets, though the latter's decline may be partially attributable to other factors such as secondary poisoning from prairie dog toxicants (e.g., strychnine) or high susceptibility to canine distemper.

The black-footed ferret was listed as an endangered species on March 11, 1967.

In 1964, a wild population of ferrets was discovered in South Dakota and was studied intensively for several years; this population became extinct in 1974, its last member dying in captivity in 1979. Afterwards, some believed that the species was probably extinct, until another wild population was discovered near Meeteetse, Wyoming, in 1981. The Meeteetse population underwent a severe decline between 1985 and 1986 due to canine distemper, which is fatal to infected ferrets. Eighteen survivors were taken into captivity in 1986 and 1987 to prevent extinction and to serve as founder animals in a captive propagation program aimed at eventually reintroducing the species into the wild.

In 6 years, the captive population has increased from 18 to over 300 black-footed ferrets. In 1988, the single captive population was split into three separate captive subpopulations to avoid the possibility that a single catastrophic event could wipe out the entire known population. Two additional captive subpopulations were established in 1990, and one additional captive subpopulation was established in 1991 and again in 1992, making a total of seven captive subpopulations. A secure population of 200 breeding adults was achieved in 1991, allowing initiation of ferret reintroductions into the wild.

Section 10(j) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), allows the Fish and Wildlife Service (Service) to designate certain populations of federally listed species that are released into the wild as "experimental populations." The circumstances under which this designation can be applied are: (1) The population is wholly separate geographically from nonexperimental populations of the same species (e.g., the population is reintroduced outside the species' current range but within its historical range); and (2) the Service determines that the release will further the conservation of the species. This designation can increase the Service's flexibility to manage a reintroduced population, because under section 10(j) an experimental population can be treated as a threatened species regardless of its designation elsewhere in its range, and, under section 4(d) of the Act, the Service has greater discretion in developing management programs for threatened species than for endangered species.

Section 10(j) of the Act requires, when an experimental population is designated, that a determination be

made by the Service whether that population is essential or nonessential to the continued existence of the species. Nonessential experimental populations located outside national wildlife refuge or national park lands are treated, for purposes of section 7 of the Act, as if they are proposed for listing. Thus, only two provisions of section 7 would apply outside National Wildlife Refuge System and National Park System lands: section 7(a)(1), which requires all Federal agencies to use their authorities to conserve listed species; and section 7(a)(4), which requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. Section 7(a)(2) of the Act, which requires Federal agencies to insure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands. Activities undertaken on private lands are not affected by section 7 of the Act unless they are authorized, funded, or carried out by a Federal agency.

However, pursuant to section 7(a)(2), individual animals comprising the designated experimental population may be removed from an existing source or donor population only after it has been determined that such removal is not likely to jeopardize the continued existence of the species. Moreover, removal must be conducted under a permit issued in accordance with the requirements in 50 CFR § 17.22.

Forty-nine black-footed ferrets were reintroduced as a nonessential experimental population to the Shirley Basin/Medicine Bow (Shirley Basin) area in southeastern Wyoming in September and October 1991. Subsequent surveys during November 7-14, 1991, found nine individual ferrets. Snow surveys conducted during March 1992 revealed sign of six to eight ferrets. Spotlight surveys conducted during July and August 1992 confirmed the presence of a minimum of four adult black-footed ferrets and two litters. One litter contained two young and the second contained four young ferrets. During September and October 1992 an additional 50 black-footed ferrets were released at the Shirley Basin site. Spotlight surveys in July 1993 confirmed the presence of a minimum of nine adults and four litters. Forty-eight ferrets were released at the Shirley Basin site in September and October 1993. Currently, the only known populations of black-footed ferrets are the experimental population at the Shirley Basin site and those animals in captivity.

In addition to this reintroduction, the Service and state wildlife agencies in 11 western states currently are identifying potential black-footed ferret reintroduction sites within the species' historical range. Potential reintroduction sites have been identified in Wyoming (two sites), Montana (one site), South Dakota (one site), Colorado (one site), Utah (one site), and Arizona (one site).

On April 13, 1993, the Service published a proposed rule in the *Federal Register* (58 FR 19220) to introduce black-footed ferrets into the North-central Montana Black-footed Ferret Experimental Population Area (Experimental Population Area) as a nonessential experimental population. This area is located in portions of Phillips and Blaine Counties, Montana, and was historically occupied by black-footed ferrets. Numerous ferret surveys conducted in the Experimental Population Area have resulted in no evidence of ferrets currently inhabiting the area (Reading 1991). The latest physical evidence of black-footed ferrets in the Experimental Population Area was a skull collected in 1984.

To the best of our knowledge, any reintroduced population of ferrets in the Experimental Population Area would be wholly separate and distinct from other ferret populations.

Experimental Population Site: The Experimental Population Area encompasses 11,016 km² (4,237 mi²) and consists of 36 percent private land, 5 percent State trust land, 23 percent federally managed land (outside national wildlife refuges), 9 percent national wildlife refuge land, and 22 percent Fort Belknap Indian Reservation (Reservation) land. Except for the Little Rocky Mountains, the majority of the land area is actual or potential prairie dog habitat. Mapping conducted in 1985 and 1990 indicated that 19,223 hectares (46,886 acres) of prairie dog towns existed in the Experimental Population Area, with an estimated potential prey biomass to support 561 black-footed ferret families.

Reintroduction, habitat management, and intensive ferret management will occur in a smaller, specifically-delineated area called the North-central Montana Reintroduction Area (Reintroduction Area), which occurs within the Experimental Population Area. Specifics on the location and boundaries of the Reintroduction Area are provided in the accompanying special rule. The Reservation contained 8,572 hectares (20,907 acres) of prairie dog towns in 1990, and occurs entirely within the designated Experimental

Population Area but is not included within the Reintroduction Area.

Mapping of prairie dog towns completed during fall and summer of 1991 and 1992 showed a 52 percent reduction in prairie dog acreage within the Reintroduction Area from 1988 to fall 1992. Sylvatic plague is active in the complex and is believed to be the primary factor in the reduction of occupied acreage. Prairie dog colonies in the Reintroduction Area within 20 km (12.4 mi) of the release site will be resurveyed in the summer of 1994 prior to the release of black-footed ferrets.

The UL-Bend National Wildlife Refuge (NWR), adjacent to and administered by the Charles M. Russell NWR, is the primary release site (hereafter in this document this entire area will be referred to as the Charles M. Russell NWR to avoid confusion). If reintroduction is successful, ferrets will eventually disperse from the release site into other portions of the Reintroduction Area. If a ferret were to disperse outside the Reintroduction Area and/or to the Reservation, the affected landowner or the Fort Belknap Tribal Council has the option to request its removal. Even without such a request, authorized personnel could relocate the ferret to the Reintroduction Area or to captivity, if necessary.

Ferrets will be released into the Reintroduction Area only if biological conditions are suitable, and under a management framework determined to be acceptable to the State of Montana, the Service, private landowners, and other land managers in the area. Reintroduction will be re-evaluated if one or more of the following conditions occur:

(1) The black-footed ferret habitat rating index (Biggins et al. 1993) for the Reintroduction Area falls below 50 percent of the 1988 level. This habitat rating index is based on abundance of prairie dogs and estimates the number of ferret families a prairie dog complex can support.

(2) Failure to acquire or maintain a nonessential experimental population designation for the Reintroduction Area through the Federal rulemaking process.

(3) Wild black-footed ferret populations are found within the Experimental Population Area prior to the first breeding season following the first reintroduction.

(4) Active cases of canine distemper are diagnosed within the Reintroduction Area within 6 months prior to release.

(5) Fewer than 20 black-footed ferrets are available for the first release.

(6) Funding is not available to implement the reintroduction program.

Reintroduction protocol: In general, the reintroduction protocol will involve releasing a minimum of 20 ferrets in the first year of reintroduction and releasing ferrets annually thereafter, as needed, for 2 to 4 years or until a wild population is established. Captive animals selected for release will be as genetically redundant as possible with the gene pool in the captive breeding population; hence, any loss of released animals is unlikely to appreciably affect existing genetic diversity in the species. Moreover, because breeding ferrets in captivity is not a problem, any animals lost in the reintroduction effort could be replaced. To enhance genetic diversity in the reintroduced population, it may be necessary to release ferrets from other established, reintroduced nonessential populations (e.g., the Shirley Basin site).

Several strategies for releasing captive-raised black-footed ferrets will be utilized during the reintroduction: (1) Hard release with no pre-release conditioning (i.e., release without an acclimation period); (2) soft release (release with an acclimation period and gradual reduction in supplied food and shelter); and (3) pre-release conditioning in a quasi-natural environment followed by hard release (this technique may be used when sufficient numbers of black-footed ferrets are available). Ferrets will be released in September and October, when wild juvenile ferrets typically become independent and exhibit dispersal tendencies, and are physically capable of killing prey, avoiding predators, and adjusting to environmental extremes.

The hard release with no pre-release conditioning will utilize neither release cages or any preconditioning in a contained prairie dog colony. Ferrets will be transported to the release site and held for a minimum of 12 hours to ensure general health. Subsequently, the ferrets will be released into the prairie dog colonies from the transport container and will receive no supplementary care.

Soft release involves raising juveniles in captivity with little exposure to the physical and environmental demands experienced in the wild. These juvenile ferrets will then be placed into release cages with buried nest boxes at the Reintroduction Site. It may be desirable to surround each cage with an electric fence to prevent damage by cattle or big game. Ferrets will be held and fed in the release cages for 10 days while acclimating to the cage and immediately surrounding area. After 10 days, the doors to the release cages will be opened and the ferrets will be allowed access to the prairie dog colonies; however, food will continue to be

provided while the ferrets learn to kill prey in the prairie dog colony. This soft release design is similar to release protocol used at the Shirley Basin reintroduction site, except the Montana site is located in black-tailed prairie dog colonies, instead of white-tailed prairie dog colonies.

Pre-release conditioning prior to hard release will utilize black-footed ferrets raised from birth in a large, seminatural, enclosed prairie dog colony. In this design, the captive environment should allow a natural expression of genetically influenced behaviors, or, if behaviors are learned, the captive environment should provide appropriate stimuli to learning during the critical period. Presenting juvenile captive animals with stimuli resembling those prevalent in their natural environment may help individuals retain efficient use of adaptive traits and, subsequently, increase post-release survival by reinforcing inherent survival skills in natural ways at natural periods of development.

Regardless of release technique, it is expected that ferrets will be placed in separate burrow systems 200 meters (219 yards) apart within the same prairie dog colony. Ferrets will be released sequentially over a period of 3–8 weeks because all animals will not reach the proper age for release at once, and because it would be difficult to intensively monitor all radio-tagged animals if they are released simultaneously. The proposed rule stated that all ferrets released would be young-of-the-year. This final rule removes that language in an effort to broaden the Service's flexibility and options in managing the release and analyzing of reintroduction techniques. The Service believes removal of this language to be minor in nature and does not affect the intention of this rulemaking.

Prior to release, ferrets will be vaccinated against disease, as appropriate, including canine distemper if an effective vaccine is developed for ferret use by that time (an experimental distemper vaccine is now being tested). Preventative and, where necessary, corrective measures to reduce ferret predation by coyotes (*Canis latrans*), badgers (*Taxidea taxus*), raptors, or other predators will be undertaken in the initial phases of the release, but should not be necessary in the long term. Habitat conditions will be monitored continually during the reintroduction effort. If the ferret habitat rating index (Biggins et al. 1993) drops to unacceptable levels, ferrets will be released in another biologically suitable prairie dog complex in the

Reintroduction Area, translocated to another release site, released at the next scheduled site, or returned to captivity. Cooperative management actions will be taken to maintain overall prairie dog populations at 1988 levels in the Reintroduction Area.

All black-footed ferrets released will be appropriately marked (e.g., with a Passive Integrated Transponder (PIT) tag or non-toxic paints). Some ferrets (up to a maximum of 50) may be radio-tagged in the first year, while smaller samples may be radio-tagged in later years. Radio-tagged ferrets will be intensively monitored. Other ferrets will be monitored using spotlight, snow surveys, or visual sighting techniques.

It is unlikely that released ferrets or their offspring will emigrate outside of the Experimental Population Area. This is because the Experimental Population Area is essentially a large island of excellent ferret habitat (i.e., prairie dog colonies), while the surrounding area to the north, east, and west is relatively devoid of prairie dog colonies, and the Missouri Breaks and Missouri River on the southern edge of the Experimental Population Area are physiographic obstacles to migration. Given the large size of the Experimental Population Area, current knowledge of ferret mobility gained from radio-telemetry studies at Meeteetse between 1982 and 1986 (less than 7 km or 4.3 mi/night) and 1991 studies at the Shirley Basin site (17 km or 10.5 mi/night), and significantly better prey base and colonization opportunities within the Experimental Population Area, it is unlikely that ferrets will disperse outside of the Experimental Population Area.

Experimental reintroduction designs will be tested and possibly modified at this and/or upcoming reintroduction sites. The Montana release will be limited by the number of captive ferrets available in excess of captive population objectives, needs of the Shirley Basin reintroduction site, and the needs of other ferret reintroduction sites initiated in the future. However, the 20 to 56 ferrets available for release in Montana in 1994 are considered sufficient to begin testing the proposed release techniques and to monitor results.

Realistically, the Service and the Montana Department of Fish, Wildlife and Parks (Department) expect high mortality rates (up to 90 percent) among released ferrets in the first year of release. Despite pre-release conditioning, captive-bred animals will be relatively naive in terms of avoiding predators, securing prey, and withstanding environmental rigors. Mortality is expected to be highest

within the first month of release. A realistic goal for the first year, based on experience at the Shirley Basin site, would be for 20 percent of released ferrets to survive at least 1 month after release, with perhaps 10 percent of released animals surviving the winter.

Intensive studies conducted on the wild Meeteetse population between 1982 and 1986, and in 1991 and 1992 at the Shirley Basin reintroduction site will provide a natural baseline against which the Montana reintroduction effort can be compared to determine how well the experiments are proceeding. Ferrets have a high level of natural mortality in the wild, based on studies at Meeteetse. Population data presented by Forrest et al. (1988) was used for computer simulation modeling by Harris et al. (1989), and indicated juvenile mortality rates of a stable population of approximately 78.5 percent. Since young-of-the-year ferrets will be used in the reintroduction program initially, these data will provide a basis of comparison. Additionally, these baseline data will be supplemented with baseline biological and behavioral data gathered in the 1960's and 1970's from the South Dakota population.

If successful, this reintroduction effort is expected to result in the establishment of a free-ranging population of at least 50 adult black-footed ferrets within the Reintroduction Area by a target date of 1998. The Service and Department will evaluate progress of the reintroduction annually, including sources of mortality. The biological status of the population at the site will be re-evaluated within the first 5 years to determine future management needs. However, the 5-year review will not include an evaluation to determine whether the nonessential experimental designation for the Montana ferret population should be changed. The Service anticipates that this designation will not be changed for the Montana ferret population unless the experiment is determined to be a failure (and this rulemaking is terminated) or until the species is determined to be recovered (and is delisted). Once recovery goals are met for delisting the species, a proposed rule to delist will be prepared.

The revised Black-footed Ferret Recovery Plan (Recovery Plan) (USFWS 1988) establishes objectives and outlines steps for recovery that, when accomplished, will provide for viable black-footed ferret populations in captivity and within its historical range. These objectives include:

(1) Increasing the captive population of black-footed ferrets to a census size of 200 breeding adults by 1991 (this

recovery goal subsequently was changed to 240 and has been achieved);

(2) Establishing a pre-breeding census population of 1,500 free-ranging black-footed ferret breeding adults in 10 or more populations with no fewer than 30 breeding adults in any population by the year 2010; and

(3) Encouraging the widest possible distribution of reintroduced black-footed ferret populations.

Status of Reintroduced Population

The north-central Montana black-footed ferret population will be designated a nonessential experimental population according to the provisions of section 10(j) of the Act. The basis for this designation is explained below. The 1988 Recovery Plan states as one of its goals the development of a captive population containing a minimum of 200 animals. This number was chosen to maintain maximum genetic variability and to ensure enough animals to protect the species from a stochastic event; however, it has since been revised to 240 by the Species Survival Plan Group of the American Zoological and Aquarium Association, which manages the captive ferret population. To date, the captive program contains over 300 black-footed ferrets separated geographically into 7 different breeding facilities. With the recovery goal of 240 animals achieved, the captive population can now supply surplus animals for reintroduction efforts. As described in the Wyoming final rule published in the **Federal Register** on August 21, 1991 (56 FR 41473), the captive population will be the donor population from which surplus ferrets will be taken for reintroduction activities. Without the protection of the donor or captive population, reintroduction efforts could not occur. Therefore, the captive donor population is essential to the recovery of the species by supplying surplus ferrets for reintroduction.

The "experimental population" designation means the reintroduced ferret population will be treated as a threatened species rather than an endangered species. Under section 4(d) of the Act, this designation enables the Service to develop special regulations for management of the population that are less restrictive than the mandatory prohibitions covering endangered species. Thus, the experimental designation allows the management flexibility needed to ensure that reintroduction is compatible with current or planned human activities in the reintroduction area and to permit biological manipulation of the population for recovery purposes.

Experimental populations can be determined as either "essential" or "nonessential." An essential experimental population means a population "whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild" [50 CFR 17.80 (Subpart H—Experimental Populations)]. All other experimental populations are treated as "nonessential." For purposes of section 7(a)(2) of the Act, nonessential experimental populations are treated as though they are proposed for listing (except on National Wildlife Refuge System and National Park System lands, where they are treated as a species listed as threatened under the Act).

The captive black-footed ferret population is the primary species population. It has been protected against the threat of extinction from a single catastrophic event by splitting the captive population into seven widely separated subpopulations.

The primary repository of genetic diversity for the species is the approximately 240 adult breeders in the captive population. Animals selected for reintroduction purposes will be as genetically redundant as possible with the captive population. Hence, any loss of reintroduced animals in the Montana experimental population would not significantly impact species survival or the goal of preserving maximum genetic diversity in the species.

All animals lost during the reintroduction attempt can be readily replaced through captive breeding, as demonstrated by the rapid increase in the captive population over the past 6 years. Based on current population dynamics, 100 juvenile ferrets will likely be produced each year in excess of numbers needed to maintain 240 breeding adults in captivity.

The concept of experimental populations and classifying them as nonessential was amended into the Act by Congress in 1982 to make it easier to reintroduce individuals of an endangered or threatened species in areas where there was local opposition to the reintroduction. This is discussed in greater detail later in this document under Issue 1.

The Experimental Population Area does not currently contain ferrets; the proposed nonessential experimental population will include all ferrets taken from captivity and released into the Experimental Population Area and all their progeny.

This reintroduction effort will be the Service's second attempt to reintroduce the black-footed ferret into the wild. The biological and logistical problems of reintroducing and recovering this

species that remain to be addressed are significant. However, reintroduction attempts must continue or the captive population may become overly adapted to captivity. In the long run, exclusive captivity likely would increase the risk of ferrets losing important wild survival instincts and reduce the likelihood of successful reintroduction and ultimately recovery of the species.

Fifty-eight percent of the land in the Experimental Population Area is privately managed or on the Fort Belknap Indian Reservation. The nonessential experimental population designation will facilitate reestablishment of this species in the wild by easing landowner concerns about the effects on their activities of protection measures for reintroduced ferrets. The experimental population designation is less restrictive than the "endangered" designation and provides a more flexible management framework for protecting and recovering black-footed ferrets, thereby reassuring non-Federal landowners that they may continue their current lifestyles.

Resource management plans for U.S. Bureau of Land Management (BLM) lands within the Reintroduction Area provide for prairie dog management for black-footed ferrets while maintaining traditional multiple uses such as prairie dog shooting, grazing, oil and gas development, etc. The Charles M. Russell NWR, the primary ferret release site, will serve as a refugium where land management conflicts can be avoided. Management plans for the refuge allow for prairie dog expansion but does not allow prairie dog shooting; cattle grazing is either restricted or absent.

First attempts to reintroduce black-footed ferrets into the wild (including the Shirley Basin and Montana reintroductions) will place great emphasis on developing and improving reintroduction techniques. This applied research will lay the groundwork for a general black-footed ferret reintroduction and management protocol for other reintroduction sites, which the Service, together with other State and Federal authorities, expects to develop after initial reintroductions. Thus, an inability to establish a Montana population in the first few years of effort will not be considered to "appreciably reduce the likelihood of the survival of the species in the wild" (50 CFR 17.80), because the knowledge and data obtained during this reintroduction effort in black-tailed prairie dog colonies will be used to improve reintroduction techniques, thereby enhancing the probability of successful future reintroductions at other sites.

As ferret reintroduction efforts progress, the Service will evaluate each potential reintroduction site to determine whether subsequently released populations should be proposed as nonessential experimental or essential experimental populations or should retain their endangered status. The Service believes that at least 10 individual wild populations are needed to ensure the immediate survival and downlisting of this species to threatened status (U.S. Fish and Wildlife Service 1988).

Location of Reintroduced Population

Under section 10(j) of the Act, an experimental population must be wholly separate geographically from nonexperimental populations of the same species. Since the last known member of the original Meeteetse ferret population was captured for inclusion in the captive population in 1987, no ferrets other than those released in Wyoming in 1991, 1992, and 1993 have been confirmed anywhere in the wild. There is a chance that ferrets may still exist in the wild outside the Shirley Basin site. However, thousands of hours of ferret survey and habitat evaluation work have been conducted in the general vicinity of the proposed Montana reintroduction site and no wild ferrets have been found. Based on these data, the Service does not believe that the reintroduced population will overlap with any wild population of the species.

The Experimental Population Area lies between the Milk River on the north and the Missouri River on the south in Phillips and Blaine Counties. The eastern boundary is the Phillips/Valley County line. The west boundary follows the west edge of the Reservation to the southwestern corner, then extends south to the Missouri River along the Phillips/Blaine County line.

Since 1978, 175 ferret surveys at 138 different prairie dog colonies covering over 14,351 hectares (35,463 acres) have been conducted in the Experimental Population Area. Wildlife biologists spent approximately 14,122 hours on all prairie dog colonies within the area performing activities related to ferrets, prairie dogs, or species associated with prairie dogs, and local residents were extensively contacted and solicited for ferret observations. No live ferrets were located. Based on this survey work, it is reasonable to conclude that wild black-footed ferrets no longer exist in the area encompassed by the Experimental Population Area boundary. Consequently, barring strong evidence to the contrary (such as a wild ferret being found in the Experimental

Population Area before the first breeding season), the Service with this final rulemaking administratively determines that wild ferrets no longer exist in the Experimental Population Area prior to this release.

The Reintroduction Area will serve as the core recovery area for the north-central Montana experimental population; i.e., efforts to maintain ferret and prairie dog populations will focus on the Reintroduction Area. The Reintroduction Area covers 206,000 hectares (502,000 acres) composed of approximately 40 percent BLM-administered lands, 30 percent private lands, 20 percent National Wildlife Refuge System lands, and 10 percent lands managed by the Corps of Engineers, the Bureau of Reclamation, or the Montana Department of State Lands. Within the Reintroduction Area are approximately 6,201 hectares (15,068 acres) of prairie dog colonies: 2,718 BLM hectares (6,604 acres); 1,851 Charles M. Russell National Wildlife Refuge hectares (4,500 est. acres); 349 Department of State Land hectares (848 acres); and 1,282 private hectares (3,116 acres). Under this final rule, ferrets that move to habitat outside the Reintroduction Area, including habitat on the Reservation, could be returned to the Reintroduction Area.

Prior to the first breeding season following the first ferret releases in Montana, all marked ferrets inhabiting the Experimental Population Area will comprise the nonessential experimental population. During and after the first breeding season, all ferrets inhabiting the Experimental Population Area, including all progeny of released animals, will comprise the nonessential experimental population.

There are significant barriers to ferret movement within and bordering the Experimental Population Area. These barriers are the Missouri River and, most importantly, the paucity of significant prairie dog colonies outside the Experimental Population Area. These movement barriers are expected to impede ferret dispersal within and outside the Experimental Population Area.

All ferrets released in the Reintroduction Area will be appropriately marked (e.g., with radio collars, PIT tags, or non-toxic paints). In the unlikely event that an unmarked ferret is found in the Experimental Population Area before the first breeding season (February-May 1995) following the fall 1994 release, a concerted effort will be initiated to find the location of the source wild population. This search will determine whether a wild population exists; if

such a population is confirmed, authorities will take appropriate cooperative action for its conservation. These actions would be guided by a "Final Contingency Plan for Disposition of Black-footed Ferrets Found in the Wild in Montana," developed by the Montana Department of Fish, Wildlife and Parks (MDFWP 1987); this plan calls for notification of Service and Department officials and affected landowners. If a wild ferret population was found, up to nine male and/or nonlactating female ferrets would be removed and transported to captive breeding facilities. The impact of the ongoing establishment of a nonessential experimental population in the Reintroduction Area on any newly found population would also be evaluated and appropriate action taken. In addition, any unmarked black-footed ferrets found outside the Experimental Population Area following the first breeding season will be "DNA fingerprinted" to determine if the individual(s) emigrated from the Experimental Population Area. If so, they would be returned to the Reintroduction Area or to captivity and become part of the captive breeding colony.

Management

The Montana ferret reintroduction project will be undertaken by the Service and the Department in accordance with the North-central Montana Black-footed Ferret Reintroduction and Management Plan (Management Plan) (MDFWP 1992). Copies may be obtained from the Montana Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620 (telephone 406/444-2535). This Management Plan will be updated as necessary. Details on the monitoring of prairie dogs and black-footed ferrets were discussed extensively in the proposed rule (58 FR 19220) but are not repeated here.

The Service will assist in ensuring that governmental agencies and the public are informed about the presence of ferrets in the affected area via public information and education programs and media. These programs also will address the precautions and care that should be taken in handling sick and injured ferrets. This will enhance effective treatment and care in handling specimens and, if dead ferrets are located, will ensure proper preservation of ferret remains. The finder or investigator will be requested to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

The Service will require that persons who take a ferret or who locate a dead,

injured, or sick ferret immediately notify the State Supervisor, Fish and Wildlife Service, Ecological Services, Helena, Montana.

1. Disease considerations:

Reintroduction will be reevaluated if an active case of canine distemper is documented in any wild mammal within 6 months prior to the scheduled reintroduction. Samples from approximately 20 coyotes will be obtained prior to reintroduction to determine if active canine distemper exists in the reintroduction area. Visitors and biologists will be discouraged from bringing dogs into the Reintroduction Area. Residents and hunters will be encouraged to vaccinate pets and report unusual wildlife behaviors and dead animals. Efforts are continuing to develop an effective long-term canine distemper vaccine for ferrets.

Ferrets will not be released into the Reintroduction Area or those already released will be relocated from the Reintroduction Area if the ferret habitat rating index (Biggins et al. 1993) falls below acceptable minimum levels as a result of sylvatic plague. Sylvatic plague has been documented in the proposed reintroduction area; therefore, monitoring will occur on a regular basis prior to and during the reintroduction effort. To the extent possible, strategies will be developed to enhance prairie dog recovery in areas impacted by plague.

2. *Prairie dog management:* The Service and Department will work cooperatively with landowners and land management agencies in the Reintroduction Area to: (a) Maintain an objective of 10,660 hectares (26,000 acres) of prairie dog habitat of mixed ownership, and (b) manage the prairie dog acreage at release sites at or below the 1988 survey level before ferrets are released (prairie dogs could be subject to control measures if their numbers exceed 1988 levels). Specific measures for managing the prairie dog ecosystem in the Reintroduction Area are described in the Management Plan. The Department, in cooperation with the Service, will coordinate prairie dog management programs, agendas, and the roles of participating agencies and individuals. A local Citizens Steering Committee will be used to assist the Department with this task. In areas where prairie dogs become a problem for the landowner, control techniques compatible with ferret recovery objectives could be implemented—e.g., through Environmental Protection Agency registered toxicants, nonlethal control methods (barriers, mechanical

land treatment, water development, or grazing management) and shooting.

3. *Mortality:* Though efforts will be made to minimize ferret mortality during the reintroduction, significant mortality will inevitably occur as captive-raised animals adapt to the wild. Natural mortality from predators, fluctuating food availability, disease, hunting inexperience, etc., will be reduced though predator and prairie dog management, vaccination, soft release, supplemental feeding, and pre-release conditioning. Human-caused mortality will be reduced through information and education efforts directed at landowners and land users and review and cooperative management (where necessary) of human activities in the area.

A low level of mortality from "incidental take" (defined under the Act as take that is the result of, but not the purpose of, an otherwise lawful activity) is expected during the reintroduction because the program has been designed to work within the context of traditional land uses in the Reintroduction Area, such as grazing and ranching activities.

Incidental take (e.g., ferret injury or mortality) will be required to be reported immediately to the Service. The Service will investigate each case. If it is determined that a ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, such conduct will not be considered "knowing take" for the purpose of this regulation. Therefore, the Service will not seek legal action for such conduct. However, knowing take will be referred to the appropriate authorities for prosecution.

The biological opinion prepared on the reintroduction anticipates an incidental take level of 12 percent/year. If this level of incidental take is exceeded at any time within any year, the Service, in cooperation with the Department, will conduct an evaluation of incidental take and cooperatively develop and implement with landowners and land users measures to reduce incidental take.

Even if all released animals were to succumb to natural and human-caused mortality factors, this would not threaten the continued existence of the species, because the captive population is the species' primary population and could readily replace any animals lost in the reintroduction effort. This is consistent with the design of the reintroduced population as a nonessential experimental population. The choice for wildlife managers is either to risk the loss of surplus captive-bred ferrets during reintroduction efforts

designed to re-establish the species in the wild, or to keep all ferrets in the relative safety of captivity. The Service believes the long-term benefits to the species of establishing individual wild ferret populations outweighs the relatively minor risks associated with losses of surplus ferrets during reintroduction efforts.

4. *Special handling:* Under the special regulation [promulgated under authority of section 4(d) of the Act] that will accompany the experimental population designation, Service and Department employees and agents would be authorized to handle ferrets for scientific purposes (such as replacing radio collars); relocate ferrets to avoid conflict with human activities; relocate ferrets that have moved outside the Reintroduction Area when removal is necessary or requested; relocate ferrets within the Experimental Population Area to improve ferret survival and recovery prospects; relocate ferrets to future reintroduction sites; aid animals which are sick, injured, or orphaned; and salvage dead ferrets. If a ferret is determined to be unfit to remain in the wild, it would be returned to captivity. The Service would determine the disposition of sick, injured, orphaned, or dead ferrets.

5. *Coordination with landowners and land management agencies:* The Montana ferret reintroduction program was discussed with potentially affected State and Federal agencies in the proposed Reintroduction Area. A scoping effort to identify issues and concerns associated with the reintroduction was conducted prior to the development of the proposed rule, and a North-central Montana Working Group (Working Group) consisting of representatives from the Department, the Service, and BLM was assembled. The Working Group was instrumental in developing the reintroduction program and has acted as a recovery implementation group; it helped locate a suitable reintroduction area, defined the boundaries of the Experimental Population Area, identified issues and concerns, developed release protocols and research objectives, and made written recommendations. The Working Group's recommendations were incorporated into the Management Plan (MDFWP 1992).

The Working Group received assistance from the North-central Montana Black-footed Ferret Advisory Committee. This committee was established by the State of Montana and consisted of two representatives from the Animal and Plant Health Inspection Service, three from business, three landowners, the county agent for

Phillips County, and representatives from the Montana Department of State Lands, the Montana Department of Agriculture, the Bureau of Indian Affairs, the National Wildlife Federation, the Fort Belknap Tribe, and the Yale School of Forestry and Environmental Studies. In addition, affected private land managers in the area were consulted and offered the opportunity to participate in development of the Management Plan. Public meetings concerning the proposed Montana ferret reintroduction were held in Missoula, Malta, Fort Belknap, Billings, and Miles City, Montana, in December 1991 to offer the general public in Montana the opportunity to learn about and comment on the reintroduction proposal. Although support for the reintroduction was expressed at the Miles City, Billings, and Missoula meetings, local residents within the Reintroduction Area did not support the project.

6. *Potential for conflict with oil and gas and mineral development activities:* Because all existing oil, gas, and mineral leases in the Reintroduction Area do not occur in prairie dog habitat, and the probability of new bentonite or oil and gas development is considered low, it is unlikely that oil and gas development in the Reintroduction Area would preclude establishment of a viable wild population of ferrets, even assuming full development of current oil and gas leases. If new oil or gas fields were developed in the Reintroduction Area, the Service, the Department, and BLM would work with affected companies to develop mutually agreeable means to avoid or mitigate potential adverse impacts from oil and gas activities on ferrets or their habitat. In addition, the Service is currently developing oil and gas guidelines for new leases and oil and gas projects proposed in prairie dog ecosystems managed for black-footed ferret recovery.

7. *Potential for conflict with grazing and recreational activities:* All BLM administered lands in the Reintroduction Area are included in grazing allotments. However, conflicts between grazing and ferret management are not anticipated on Federal lands, because current BLM rangeland management systems provide for prairie dog populations in grazed areas. No additional grazing restrictions will be placed on BLM lands with grazing allotments in the Reintroduction Area as a result of ferret reintroduction.

No restrictions in addition to existing requirements will be placed on prairie dog control activities by private landowners. Under the Management Plan, landowners can readily control

prairie dogs on their lands. Elimination of prairie dogs on private or State lands within the Reintroduction Area would not prevent establishment of a self-sustaining ferret population, because sufficient prairie dog numbers to support such a population exist on Federal lands.

Recreational activities currently practiced in the Reintroduction Area (e.g., antelope hunting, prairie dog shooting, furbearer or predator trapping, and off-road vehicle recreation) are either unlikely to impact ferrets or, if negative impacts to ferrets are demonstrated, will be managed to avoid or minimize such impacts.

8. *Protection of ferrets:* Released ferrets will initially need protection from natural sources of mortality (predators, disease, inadequate prey, etc.) and from human-caused sources of mortality. Natural mortality will be reduced through pre-release conditioning, soft release, vaccination, predator control, management of prairie dog populations, etc. Human-caused mortality will be minimized by placing ferrets in an area with low human population density and relatively low development; by informing and working with local landowners, Federal land managers, developers, and recreationists to develop methods for conducting existing and planned activities in a manner compatible with ferret recovery; and by conferring with developers on proposed actions and providing recommendations that will reduce likely adverse impacts to ferrets.

A final biological opinion was prepared on this action to reintroduce ferrets into the Experimental Population Area and concluded that this action is not likely to jeopardize any listed species.

9. *Overall:* The designation of the north-central Montana ferret population as a nonessential experimental population and its associated management flexibility should encourage local acceptance of and cooperation with the reintroduction effort. The Service and Department consider the nonessential experimental population designation and accompanying special rule, the Management Plan, and the commitment to accommodate cooperatively planned oil, gas, and mineral exploration and development necessary to receive the cooperation of affected landowners, agencies, and citizens, and oil and gas, minerals, grazing, and recreational interests in the area.

10. *Effective date:* Pursuant to 5 U.S.C. 553(d)(3), this rule will take effect 30 days after publication. It is essential to the success of the

reintroduction effort that ferret releases commence in the fall of the year, when wild young ferrets typically would become independent of natal care and disperse. The Service hopes to begin initial ferret releases in the Montana Reintroduction Area in late September 1994.

Summary of Comments and Recommendations

In the April 13, 1993, proposed rule and associated notifications, all interested parties were invited to submit comments or recommendations concerning any aspect of the proposed rule that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, business and conservation organizations, and other interested parties were contacted and requested to comment. On April 22, 1993, the Service mailed letters notifying 368 persons and organizations of the proposed rule and solicited their comments. Of these 368 persons and organizations notified, all were provided copies of the proposed rule, and 350 were provided with a list of 8 offices where copies of the draft environmental assessment and Management Plan could be obtained. A detailed legal notice inviting public comment was published in the Phillips County News on April 28, 1993; the Billings Gazette on April 29, 1993; and the Great Falls Tribune on April 30, 1993. On April 19, 1993, a news release was mailed to 74 newspapers, 4 television stations, and 4 radio stations in Montana. Eight government offices (seven in Montana, one in Colorado) were identified as distribution points where one could obtain copies of the rule, draft Management Plan, and the draft environmental assessment. A public hearing on the proposed rule was held on May 24, 1993, in the Malta City Hall, Malta, Montana.

The Service received letters and/or oral comments from 41 commenters, including 2 State agencies, 3 county or local government offices, 7 businesses or business organizations, 10 conservation groups, and 19 individuals. Fifteen commenters supported a nonessential experimental reintroduction; six commenters opposed reintroduction; six commenters supported reintroduction under full protection of the Act; six commenters supported an essential experimental reintroduction; and two commenters did not support reintroduction but wanted a nonessential experimental designation if black-footed ferret reintroduction went forward. Comments of a similar nature or point are grouped into a number of

general issues. These issues, and the Service's response to each, are discussed below:

Issue 1: Should the reintroduced population be designated as a nonessential experimental population? Fifteen commenters supported the nonessential experimental designation, and 12 commenters supported a more restrictive designation based on their belief that a nonessential experimental designation was not justified and/or did not offer adequate protection to reintroduced ferrets or ferret habitat. Two commenters indicated that using the captive breeding population as the only essential population violates the Act. One commenter believed the Service should designate at least one wild population of black-footed ferrets as essential to the continued existence of the species in the wild.

Response: The Service's rationale for designating the Montana ferret reintroduction as a nonessential experimental population was explained above under "Status of Reintroduced Population." Establishment of a wild population in the Experimental Population Area is not essential to the continued existence of the species in the wild. The donor captive population, which is the population whose loss would appreciably affect the likelihood of survival of the species in the wild, is secure and other reintroduction sites are being identified and readied.

The captive population is the primary species population. It has been protected against the threat of extinction from a single catastrophic event through splitting the captive population into seven widely separated subpopulations. Hence, loss of the experimental population would not threaten the species' survival.

The primary repository of genetic diversity for the species is the 240 adult breeders in the captive population. Animals selected for reintroduction purposes will be as genetically redundant as possible with the captive population; hence, any loss of reintroduced animals in this experimental population will not significantly impact the goal of preserving maximum genetic diversity in the species.

All animals lost during the reintroduction attempt can readily be replaced through captive breeding, as demonstrated by the rapid increase in the captive population over the past 6 years. Based on current population dynamics, 100 juvenile ferrets will likely be produced each year in excess of numbers needed to maintain 240 breeding adults in captivity.

There are no known populations of ferrets in the wild except for the nonessential experimental population reintroduced into the Shirley Basin area in Wyoming. The only other ferrets known to exist are in captive breeding facilities. Because the breeding program has been so successful, there are more ferrets in captivity than are needed for the breeding program or for ensuring the survival of the species. Ferrets that are the subject of this rule are surplus animals that the Service has determined are not needed for these purposes. Having a sufficient number of black-footed ferrets in the breeding program means that the Service will be able to continue to produce surplus ferrets for reintroductions and thus bring about the survival of the species in the wild.

Consequently, the captive breeding population is the population that is essential to the survival of the species in the wild. The nonessential designation is based on the Service's conclusion that those ferrets to be removed from captivity and reintroduced into the wild are not needed for the survival of the species in the wild. If the released animals are lost, they can be replaced with other black-footed ferrets produced in captivity.

Issue 2: Some commenters argued that because captive ferrets would be released into the wild, and there are no nonexperimental ferrets currently in the wild, and the only other ferrets in the wild are nonessential, therefore the loss of ferrets to be reintroduced into Montana would appreciably reduce the survival of the species in the wild. This criticism centers on the issue of whether the species will survive "in the wild."

Response: These commenters mistakenly focus on ferrets after they have been reintroduced instead of focusing on the donor population of ferrets in captive breeding facilities. The former are the ferrets which are being reclassified from endangered to nonessential experimental and which the Service has determined are not needed for the survival of the species in the wild. It is the black-footed ferrets in the breeding program that are essential to the survival of the species in the wild, because these are producing surplus animals that can be used for reintroductions to establish wild populations. Without the captive ferret population, no additional ferret reintroductions could occur and the outlook for survival of the species in the wild would be extremely uncertain at this time.

The Service's position is supported by the preamble to the final rule for establishing experimental populations (August 27, 1984; 49 FR 33885). It

explains that the organisms that will be reclassified as experimental are those which are to be removed from an existent source or donor population. Additionally, a comment on the proposed rule that preceded the final rule on experimental populations was that no species classified as endangered could have populations biologically nonessential to their survival. In its final rule, the Service disagreed with this comment and stated " * * * there can be situations where the status of the extant population is such that individuals can be removed to provide a donor source for reintroduction without creating adverse impacts upon the parent population. This is especially true if the captive propagation efforts are providing individuals for release into the wild."

Furthermore, the Service referred to the Conference Report, which is especially significant because the definition of "essential population" in the final rule is virtually identical to the language in the Conference Report. Congress explained, " * * * (T)he level of reduction necessary to constitute 'essentiality' is expected to vary among listed species and, in most cases, experimental populations will not be essential" [H.R. Conf. Rep. No. 835, 97th Cong., 2d Sess., 34 (1982)].

The Senate report explains that the special regulations designating experimental populations are to be designed to address the "particular needs" of each experimental population and that the Secretary is "granted broad flexibility" in promulgating the special regulations [S. Rep. No. 97-418, 97th Cong., 2d Sess. 8 (1982)].

It also is important to recognize that one reason Congress amended the Act in 1982 was to provide for experimental populations. The House Report is instructive on this point. It states that reintroduction efforts had encountered strong opposition from the States and areas where species were to be reintroduced. Opponents were concerned that if introduced species were to be fully protected under the Act, then conflicts with existing uses would result and new development would be curtailed. Congress amended the Act to mitigate and alleviate such fears.

Issue 3: One commenter stated that the Service's position that only black-footed ferrets in the captive population will be fully protected by the Act is arbitrary, capricious, and contrary to the intent of Congress to work affirmatively for conservation of the species in the wild.

Response: The Service has not decided that black-footed ferrets in captivity are the only ferrets that will

ever receive full protection under the Act. However, as discussed under Issue 1, the Service maintains that it has the authority under section 10(j) of the Act to designate released populations as "nonessential experimental" if such action will further the conservation of the species, and if the decision is based on the best scientific and commercial data available.

Issue 4: One commenter indicated that it is not appropriate to consider the captive population the essential population when the intent of the Act is the recovery of a given species in the wild rather than in captivity.

Response: The Service agrees that the intent of the Act is to achieve recovery of the species in the wild. However, as explained under Issue 1 and Issue 2, it is appropriate to consider the captive ferret population as the essential population, since reintroductions at this time depend on the surplus ferrets produced by captive animals. Reintroducing surplus animals from the captive population into north-central Montana as a nonessential experimental population, together with other future reintroductions, is expected to result in recovery of the species in the wild. The revised Black-footed Ferret Recovery Plan requires that 10 ferret populations be established before downlisting the species to threatened status can occur, and the captive population is necessary to establish these populations through the reintroduction process. Thus, the captive ferret population is essential to recovery of the species in the wild.

Issue 5: Two commenters stated that an "essential" designation provides greater protection for ferrets from impacts such as grazing, trapping, prairie dog hunting, and oil and gas development. Three commenters suggested that section 7 consultation provisions of an essential designation should be provided for black-footed ferret reintroductions in Montana.

Response: The Service agrees that an essential designation would provide for a more stringent review of these types of activities under section 7 of the Act than the planned nonessential designation. However, the Service is part of the Working Group that developed the Management Plan that will guide how these activities are carried out within the Experimental Population Area. Thus, the Service contributed substantially to the Management Plan and believes it provides adequate protection for ferrets during these activities and will lead to establishment of a black-footed ferret population in north-central Montana.

Issue 6: One commenter stated that no formal definition is given in the ruling

or in Service regulations as to what constitutes a nonessential population. In light of extreme susceptibility of black-footed ferrets and prairie dogs to disease and other natural and human-caused threats, a population of genetically redundant individuals does not automatically make that population nonessential.

Response: The Service's final rule that established regulations for experimental populations (49 FR 33885) defines an essential experimental population as " * * * an experimental population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild." All other experimental populations are to be classified as nonessential (i.e., one whose loss would not be likely to appreciably reduce the likelihood of the survival of the species in the wild). As explained under Issue 1, the loss of the nonessential experimental population in north-central Montana will not appreciably reduce the likelihood of the survival of the species in the wild because other surplus black-footed ferrets in captivity could be used to reestablish this population or create additional populations in the wild. This is based on the success of the captive breeding program and expected availability of captive-bred offspring for current and future reintroductions. The Service agrees that a population of genetically redundant individuals does not automatically make that population nonessential but believes in this case the designation is appropriate.

Issue 7: One commenter believed that the Service should at least recognize the portion of ferret population on Federal lands as essential.

Response: As explained under Issue 1, the Service considers the captive ferret population to be the population which is essential to the survival of the species in the wild, because it produces the surplus animals needed for currently proposed reintroduction efforts. Failure or loss of the captive population would jeopardize all future reintroductions and the survival of the species itself. However, failure of the Montana reintroduced population would not directly affect the captive population or future ferret reintroductions. Thus, the Service sees little justification for designating a portion of the Montana population (in this case, the portion on Federal land) as essential experimental, since that portion would not be biologically segregated from the balance of the population, nor would it be essential to the survival of the species in the wild.

Issue 8: One commenter indicated that the nonessential experimental

designation is being proposed only to counter local opposition to black-footed ferret recovery and that this opposition is really countered by the majority of Americans' support for recovery of all endangered species.

Response: As explained under Issue 2, Congress incorporated the use of experimental populations into the Act in 1982 for the specific purpose of providing the Service with flexibility in reintroducing endangered or threatened species back into their historical habitat for the purpose of conservation of such species. The Service appreciates this flexibility, for in this case as in others it allows recovery to proceed at a faster pace than would be possible if the Service had to overcome the opposition to reintroducing the animals as endangered. Furthermore, because sufficient safeguards are built into reintroduction and management plans, the Service believes that emphasis is better placed on reintroducing captive animals into the wild to establish populations and bring about recovery as soon as possible, than on arguing about the term under which the animals will be reintroduced.

The Service agrees that there is a high degree of support from the American public for the recovery of endangered species. However, opposition to the reintroduction of an endangered or threatened species is often most pronounced from residents of the area in which a reintroduction will occur. As discussed earlier, it was this opposition that persuaded Congress to amend the Act in 1982 to allow for experimental populations.

Issue 9: One commenter stated that the captive population has kept this species from extinction but reintroduction to the wild is necessary for long-term survival and successful reintroduction cannot be accomplished with a nonessential designation.

Response: Because no wild ferret populations have been found since the last individuals in the Méréctsee, Wyoming population were taken into captivity in 1985 and 1987 to save them from canine distemper, the captive population may indeed have saved the species from extinction. Reintroduction is certainly necessary to bring about long-term survival in the wild. However, the Service believes that successful reintroduction can be accomplished with a nonessential designation, based on the Management Plan and the accompanying special rule. The 1988 Recovery Plan states as one of its recovery goals, the development of 10 populations. The recovery plan does not state under what designation those populations must be.

Issue 10: One commenter pointed out that the proposed rule states that, "As additional wild populations become established, the captive population will diminish in relative importance and wild populations will increase in relative importance in the overall species recovery effort." This places an increased importance on the Montana population, thus making it all the more essential to recovery of the species "in the wild."

Response: The Service agrees that as wild populations become established, and the number of animals available in the wild increases, the captive population will diminish in relative importance to survival of the species in the wild. However, at this time loss of the captive population would be catastrophic, since few wild ferrets (those at the Shirley Basin site) would be available to re-establish the captive population. Furthermore, the captive population will remain important until establishment of the 10 wild populations needed for recovery is accomplished, both as a source of animals for reintroduction and as insurance against stochastic environmental events in wild populations. Conversely, the planned Montana population can be readily established or re-established from the captive population. Thus, the Service considers the captive population to be far more important to the survival of the species in the wild than the planned Montana population. Whether the Montana population is essential to recovery of the species "in the wild" was discussed under Issue 2.

Issue 11: One commenter indicated that (1) continued captivity increases the risk of animals losing important wild survival instincts and reduces the likelihood of successful reintroduction and recovery; (2) the ability for black-footed ferrets within a wild population to maintain their instinctive skills highlights the importance of wild populations; and (3) the added protection of essential designation would better allow animals the freedom to practice these skills.

Response: The Service agrees that it is important to move ahead with the reintroduction of black-footed ferrets produced in captivity as soon as possible to decrease the risk of ferrets losing important survival skills. However, the Service also believes that sufficient protection has been built into the Management Plan and the accompanying special rule in this document to allow a sufficient number of animals to survive to utilize these skills.

Issue 12: Two commenters suggested that full protection of the Act is necessary so the opportunity to designate the Experimental Population Area as critical habitat is provided.

Response: The Service recognizes that critical habitat can be designated for an endangered or essential experimental population, but not for a nonessential experimental population. However, the Service believes that the Management Plan and the accompanying special rule in this document provides sufficient protection for this nonessential experimental population. Furthermore, the Service knows from past experience that the designation of critical habitat often faces significant local opposition. As discussed under Issue 2, the experimental population designation was amended into the Act by Congress in 1982 to alleviate opposition to the reintroduction of species listed under the Act.

Issue 13: One commenter questioned how the Service can declare the black-footed ferret recovered in 10–15 years if all populations in the wild are "nonessential experimental." Will reintroduced ferret populations in other states have full endangered species status? Two commenters objected that the Service did not indicate under what circumstances black-footed ferret populations will be considered "essential" in the future. They believed the Service should discuss biological and social parameters that, when met, will move reintroduced populations from nonessential to essential.

Response: Perhaps the issue of how population designation and recovery goals relate to each other should be clarified. Under the revised Black-footed Ferret Recovery Plan, the species may be downlisted from endangered to threatened when 10 ferret populations, each with at least 30 breeding adults, are established. Thus, downlisting is based on biological parameters (e.g., ferret numbers, density, survival, recruitment, habitat quality and quantity, etc.) and population stability. The Recovery Plan makes no distinction as to how these populations are designated: once biological criteria are satisfied, each reintroduced population will count toward recovery whether it is designated as endangered, essential experimental, or nonessential experimental. Furthermore, it is erroneous to assume that a nonessential experimental population is unprotected. While the special rule under section 4(d) of the Act will allow management flexibility for the planned Montana reintroduction, it also maintains many of the essential protections of the Act. With respect to the second portion of

the question, whether black-footed ferret populations reintroduced into other states will have full endangered status or be designated as essential experimental populations remains to be determined and will be based on the circumstances of each reintroduction.

Issue 14: One commenter indicated that a historic precedent will be set if the Service establishes that once a species has been declared extinct in the wild, and only exists in captive breeding facilities, that it will never again receive full protection of the Act when it is reintroduced into the wild.

Response: The Service disagrees that a historic precedent is being set. The Service has not declared the black-footed ferret extinct in the wild, nor has it said that the species will never again receive full protection of the Act when it is reintroduced into the wild. The designation of future reintroductions of ferrets and other species will depend on the specifics of those situations and not on how the Service designated the Shirley Basin or Montana ferret reintroduced populations.

Issue 15: One commenter suggested that the rule does not address how the Service plans to address long-term viability of ferrets in the wild. The commenter also stated that until then, all reintroductions should be essential.

Response: The Service has addressed the long-term viability of ferrets in the wild through recovery goals and objectives described in the 1988 revised Black-footed Ferret Recovery Plan. This plan identifies objectives that must be met to downlist the species to threatened, which in turn would ensure the long-term viability of the species in the wild. The revised recovery plan reflects current information and recovery objectives, and outlines steps for recovery that, when accomplished, will provide for viable black-footed ferret populations in captivity and within its historical range. These objectives include:

(1) Increasing the captive population of black-footed ferrets to a census size of 200 breeding adults by 1991 (this goal was subsequently changed to 240 and has been achieved);

(2) Establishing a prebreeding census population of 1,500 free ranging black-footed ferret breeding adults in 10 or more populations with no fewer than 30 breeding adults in any population by the year 2010; and

(3) Encouraging the widest possible distribution of reintroduced black-footed ferret populations.

It is the Service's opinion that the Recovery Plan will continue to be revised to reflect future requirements and direction to ensure recovery of the

black-footed ferret in the wild. In addition, the Service plans to develop a national strategy for implementing the ferret reintroduction program, based in part on initial reintroduction efforts. This strategy would outline the specific methods and means necessary to achieve recovery objectives cited in the Recovery Plan. See Issue 1 and Issue 2 for a further discussion of essential and nonessential experimental designations.

Issue 16: One commenter suggested that the Service develop an overall strategy regarding ferret reintroduction, which would include criteria for reintroduced population designations and a programmatic plan to implement reintroductions.

Response: The Service agrees. As explained in Issue 15, it is working toward a national reintroduction strategy that will address specific procedures for reaching objectives outlined in the Service's Black-footed Ferret Recovery Plan first developed in 1978 and revised in 1988.

Issue 17: One commenter stated that the Service has not adequately considered what effect potential loss of the experimental population will have on the species as a whole.

Response: The Service stated in the proposed rule that even if all ferrets released in the Montana reintroduction were to succumb to natural or human-caused mortality factors, this would not threaten the continued existence of the species. Unless the biological status of the captive ferret population changes significantly, it is the species' primary population and could readily replace any animals lost in the reintroduction effort. This is consistent with the designation of the Montana ferret reintroduction as a nonessential experimental population and remains the Service's position with respect to the captive population and planned Montana population.

Issue 18: Does the nonessential experimental designation and/or the Management Plan for the north-central Montana reintroduction provide adequate protection of ferret habitat? One commenter stated that it did not. Another commenter suggested the nonessential experimental designation appears to be an attempt to avoid restrictions on the kinds of human activities that led to loss of black-footed ferrets in the first place. Two commenters expressed concern that prairie dog shooting, predator trapping, off-road vehicle use, lead shot poisoning, and accidental trapping will adversely affect black-footed ferrets.

Response: The Service and the Department have worked with landowners and land users to develop a

management system wherein black-footed ferrets and human activities can coexist. This does not compare to human activities in black-footed ferret habitat in the past, which were relatively unregulated. If mixed-ownership sites can be used successfully for reintroduction, this is likely to increase local acceptance at future reintroduction sites, augment the number of sites deemed potentially suitable for reintroduction purposes, and increase the species' chances for recovery.

The Charles M. Russell National Wildlife Refuge will serve as a refugium in the Reintroduction Area where prairie dog shooting, off-road vehicle use, predator trapping, and trapping will be prohibited. On BLM lands, these activities are addressed in the Judith-Valley-Phillips Resource Management Plan and Environmental Impact Statement (JVP-RMP/EIS) (BLM 1991). BLM is committed to managing existing prairie dog towns and distribution on its lands for black-footed ferrets and associated species. BLM plans to designate prairie dog towns on BLM land within identified reintroduction areas as Areas of Critical Environmental Concern. BLM also plans to manage prairie dog shooting before and after ferret reintroduction; prairie dog shooting may temporarily be prohibited in prairie dog towns where black-footed ferret reintroduction is occurring, and would be managed in towns subsequently occupied by ferrets.

Issue 19: Has there been adequate coordination with the affected public during planning and consideration of this ferret reintroduction? One commenter questioned this and suggested that the Department of the Interior should increase local and State involvement before embarking on a project of this magnitude. Another commenter recommended that a Citizen's Steering Committee be part of black-footed ferret reintroduction efforts in the future.

Response: The North-central Montana Working Group first introduced the concept of ferret recovery to the general public at an open meeting in southern Phillips County in 1985. BLM subsequently initiated efforts to identify and address concerns of the public through the formation of a Prairie Dog/Black-footed Ferret Coordinated Resources Management Planning Group as part of the ongoing JVP-RMP/EIS. Additionally, during the period of July 15 to October 5, 1990, the Proposed Action was discussed with 53 ranchers having private land and/or BLM-administered grazing leases within the Reintroduction Area. Information

regarding the JVP-RMP/EIS process and the black-footed ferret reintroduction proposal was provided to ranchers by Department, BLM, and Service biologists. Public meetings in Montana were held in Missoula on December 2, 1991; Malta on December 9; Fort Belknap on December 10; Billings on December 11; and Miles City on December 12. These meetings offered the general public an opportunity to review and comment on the reintroduction proposal.

Procedures the Service used to disseminate notice of the reintroduction and copies of the proposed rule to designate the Montana ferret population as a nonessential experimental population, together with the draft environmental assessment, were described earlier. Copies of the final rule, Management Plan, and final environmental assessment will be provided to landowners, land users, and others requesting copies.

The Department and the Service intends to develop reasonable measures to accommodate landowners and land users still concerned about possible negative impacts to their operations as a result of ferret reintroduction.

As the Montana black-footed ferret reintroduction progresses, the Service will utilize recommendations from the Working Group to help guide the reintroduction. In addition, the Department has formed a local Steering Committee to assist in implementing the Management Plan. The Steering Committee consists of representatives of landowner, business, and other interest groups.

Issue 20: Will the government change the nonessential experimental designation sometime in the future? This concern was expressed by one commenter.

Response: Once this final rule goes into effect, changing the nonessential experimental designation of the north-central Montana ferret population would require a new rulemaking process, which would include a proposed rule, a public comment period, public meetings, National Environmental Policy Act compliance, and other documentation before a final rule to change the designation could be published. Under the experimental population regulations (50 CFR 17 Subpart H), any rule designating an experimental population must provide " * * * a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species." The 5-year evaluation noted in section 17.84(g)(10) of the proposed rule is intended to be

a milestone in this required periodic review and evaluation process, and will be a review of the biological success of the reintroduction effort. If determined to be less than successful, the Service and the Department will modify the reintroduction protocol and/or the strategies within the Management Plan to improve ferret survival and/or recruitment, with the involvement of affected landowners and land managers. If the experiment is extremely unsuccessful, the Service and Department may consider a temporary hold on releasing ferrets into the Reintroduction Area until better release or management techniques are developed. The 5-year evaluation will not include an evaluation to determine whether the population should be reclassified.

The Service does not foresee any likely situation, except for eventual delisting of the species, that would call for altering the nonessential experimental status of the Montana ferret population. Should any such alteration prove necessary, however, it is possible that it would not change ferret management on private lands. If the designation changes and it is necessary to substantially modify ferret management on private lands, any private landowner who consented to ferret reintroduction on his lands would be permitted to terminate his consent and the ferrets would, at such request, be relocated.

Issue 21: Should the final rule incorporate specific management guidance regarding implementation of the experimental population? One commenter recommended that this should be done and suggested that guidance covering prairie dog shooting; leghold traps and snares; use of zinc phosphide, strychnine, and fumigants for prairie dog control; animal damage control; and incidental take provisions be included. Three commenters suggested that ranchers must have control of prairie dogs to prevent them from becoming an economic burden and that control of prairie dogs that move from Federal to private lands should be provided.

Response: Guidance addressing these management issues is included in the Management Plan. The Management Plan is referenced in the accompanying special rule as the document under which the nonessential experimental population will be managed. However, because the Management Plan will be dynamic in nature and updated as necessary, the rule refers to the Management Plan in a general sense rather than incorporating extensive management guidance. This will allow

revision of management practices without undertaking a new rulemaking.

Issue 22: Should the agreements between the Service and private landowners contain provisions to require removal of ferrets at the landowners' request and an "escape clause" to allow landowners to terminate agreements? One commenter suggested that any agreement should contain these provisions, as well as provisions regulating access to private property. Two commenters suggested that the reintroduction could adversely affect private property rights through land use restrictions under the Act.

Response: The designation of the reintroduced population as nonessential experimental, the accompanying special rule, and the Management Plan provide a means and system to reintroduce black-footed ferrets without affecting use of private lands. The Management Plan [Land Management Issues, section 1.(a)] states that black-footed ferret reintroduction does not supersede or reduce the right of private landowners to manage their property and that management actions will be implemented on private lands only with landowner approval. Section 1.(d) states that black-footed ferrets on private land in the Experimental Population Area will always be relocated if the affected landowner so requests.

Section 17.81(d) of the experimental population regulations (50 CFR 17, Subpart H) states, "Any regulation promulgated pursuant to this section shall, to the maximum extent practicable, represent an agreement between the Fish and Wildlife Service, the affected State and Federal agencies and persons holding any interest in land which may be affected by the establishment of an experimental population." The Service believes that this special rule acts in part as an agreement between the Service and affected parties. The Department may choose to enter into separate agreements with landowners during implementation of the Management Plan.

The Service and the Department will continue to work directly with affected parties within the framework of the experimental population designation and special rule and the Management Plan to make ferret recovery compatible with landowner and land user needs.

Issue 23: Should oil and gas guidelines be finalized before the north-central Montana nonessential experimental population is designated? One commenter urged that this be done. Another commenter was concerned that private lands that overlay Federal mineral, oil, and gas rights may be

subject to section 7 consultation requirements. (The term "oil and gas guidelines" in this question refers to guidelines being developed by the Service, in cooperation with BLM and the oil and gas industry, to ensure that oil and gas development is compatible with ferret reintroduction).

Response: The draft oil and gas guidelines do not need to be finalized before an initial ferret reintroduction attempt is made at the Montana site. Based on the projected low to moderate oil and gas development potential in the Reintroduction Area, and the siting of primary ferret release areas on the Charles M. Russell NWR, the Service believes there will be no significant conflicts between ferret recovery and ongoing oil and gas development. A general process for dealing with oil and gas development is outlined in the Management Plan, and mitigation measures will be negotiated on a case-by-case basis if a development proposal has the potential to adversely impact ferrets or their habitat.

Issue 24: One commenter was concerned as to whether any action that could be deemed a "taking" of a black-footed ferret will result in prosecution with civil or criminal penalties.

Response: The Service agrees that this is a legitimate concern and has included a provision in the special rule to allow for the "incidental take" of ferrets (i.e., take that results from, but is not the purpose of, the carrying out of otherwise lawful activities). Discussion regarding incidental take is included earlier in this rule in the Management section under "Mortality."

Issue 25: Are the boundaries of the Experimental Population Area appropriate? Three commenters were concerned that the Experimental Population Area was too large. Another commenter thought the Experimental Population area was too small and that released black-footed ferrets would leave the area. Another questioned whether black-footed ferrets ever occurred within the Experimental Population Area.

Response: Black-footed ferrets were historically found throughout eastern Montana. Forty-four specimens collected between 1887 and 1984 were from Montana, which includes Phillips County. In 1983, a black-footed ferret skull was found within the Experimental Population Area on the Fort Belknap Indian Reservation.

The Experimental Population Area boundaries were drawn to include all potential black-footed ferret habitat (prairie dog colonies) within the North-central Montana Prairie Dog Complex. The Service believes that the lack of

suitable habitat (i.e., contiguous prairie dog colonies or complexes) on the north, east, and west and the Missouri River on the south should deter the movement and establishment of black-footed ferrets outside the Experimental Population Area.

Section 17.84(9)(ii) of this rule describes disposition of black-footed ferrets found outside the Experimental Population Area in Montana.

Issue 26: Should the primary purpose of the Montana reintroduction be to test release techniques or to establish a viable black-footed ferret population? One commenter suggested that the primary purpose of the reintroduction should be to establish a black-footed ferret population, and two commenters thought offspring of reintroduced black-footed ferrets should be used for future reintroductions. One commenter also disagreed with the use of radio-telemetry to monitor ferrets, suggesting that radio collars adversely affect ferret behavior, thus increasing early mortality. This commenter also suggested that lack of predator monitoring would confound the meaning of predation-caused mortality data, that sufficient data already exists to demonstrate expected behavior of cage-reared ferrets, and that other, less obtrusive techniques than radio collars are available to monitor the reintroduction effort. The commenter also believed the only difference between hard and soft release is that one group of ferrets will be held 127 days and another group 136 days. One commenter thought that telemetry could be used as a tool to increase ferret survival by returning ferrets to the release colony as soon as they leave the site.

Response: The purpose of the reintroduction is to implement a primary recovery action for the black-footed ferret and to evaluate release techniques. The Montana release will test ferret reintroduction techniques and, if fully successful, will result in a wild population within 5 years.

Releases of black-footed ferrets are considered experimental, both by legal definition and according to the chronological sequence of technique development described in the revised Black-footed Ferret Recovery Plan. The Recovery Plan (section 413) stresses identification of variables that could affect the outcome of release and measurement of the effect of those variables. The Recovery Plan also suggests employing valid statistical design for the experiments. Sections 42 and 43 detail experimental release needs and suggest reliance on mark/recapture and radio-telemetry. Section

44 describes operational reintroduction of ferrets. The recovery plan suggests that the first three releases should evaluate reintroduction success and release techniques. The Service does not interpret this to mean that ferret populations cannot become established during the initial releases, or even that the probability of establishment of a population will be lower. It does mean that learning about the process has a high priority in the Montana release. Testing rearing methodology and release techniques and establishing a viable black-footed ferret population are not mutually exclusive goals.

Testing of manipulative research methods on black-footed ferrets has historically generated much discussion. A cursory review of the literature turned up 11 papers (representing 10 authors in the period 1968–1974) suggesting increased use of manipulative methods on ferrets. Suggestions for this type of research came during a period when the black-footed ferret was regarded as nearly extinct; consequently, the risk/reward evaluation must have been greatly influenced by the perceived high value of each individual animal. Currently, genetically redundant black-footed ferrets are being produced in captivity. Nevertheless, manipulative research may be more valuable during the experimental reintroduction phase of the recovery program than at any previous time or at any time in the future. Problems identified at this time can be corrected and reintroduction strategies for future reintroductions can be refined.

One problem identified during the Wyoming ferret release was retaining animals at or near the reintroduction site. Loss of ferrets during this release was primarily due to long distance dispersal and death, with the latter mostly due to predation. Pre-release conditioning methods show promise in reducing dispersal, and a variation of pre-release conditioning is a proposed part of the experimental design of the Montana reintroduction. Soft-releases (i.e., providing cages, an acclimation period, and post-release food supply) have been used exclusively in past ferret releases at considerable effort and expense. There has been little assessment of the benefits of soft release, because such assessments must be comparative and no other release techniques have been tested. The experimental design for the Montana release includes the traditional soft release and a hard release (no acclimation period and no supplemental food). The contention that the survival of black-footed ferrets may be enhanced by holding animals for 10 days at the

release site to allow for acclimation and orientation is one of the elements being tested and is part of the experimental design. Ultimately, the goal is to compare efficiency of the three techniques (soft release, hard release, and hard release with pre-release conditioning) in terms of ferret establishment and survival at the reintroduction site relative to costs. In a more immediate sense, statistical null hypotheses being tested relate to lack of significant differences between the three groups in terms of several measurable behaviors. If sufficient black-footed ferrets are available, another group of black-footed ferrets will be released in an identical manner but without being radio-collared. Spotlighting, snow tracking and mark/recapture methods will be used to monitor mid- and long-term survival of both groups of animals.

Black-footed ferret releases in Montana will be the first reintroduction of this species in black-tailed prairie dog towns. The Service believes it is worthwhile to obtain as much detailed data as possible on black-footed ferret behavior, dispersal, and mortality within this habitat type. Radio-telemetry will provide the most detailed data. One of the recognized tradeoffs when using radio-telemetry is potential additional risk to the collared animals. Actual risk has not been assessed, but no mortality due to radio collars has been documented in 5 years of field studies on black-footed ferrets or 5 additional years of work on Siberian ferrets in Asia and the United States. Problems with radio collars (e.g., mud accumulation and degradation of material) have been greatly reduced during years of development and testing, and observations of telemetered ferrets in captivity and in the wild has not shown that radio collars adversely affect behavior.

Radio-telemetry also has been used to rescue and/or identify dispersing animals that may benefit by returning them to the release site. A radio-tagged black-footed ferret in Wyoming that was rehabilitated and relocated in 1991 was one of the two females that reproduced the following year.

Issue 27: One commenter suggested that all black-footed ferrets be released on Federal lands. Another suggested that, because private lands encompass 36 percent of the Experimental Population Area, private landowners are essential to the reintroduction program. A third suggested that endangered species protection can be better achieved by providing incentives to landowners rather than instituting land-use restrictions.

Response: The initial release of black-footed ferrets is being planned on Charles M. Russell NWR (Federal land). The Service also envisions that future releases would most likely be on national wildlife refuge land or Federal lands administered by the BLM. Black-footed ferrets would not be released on private lands without the support and permission of the landowner. The Service agrees that cooperation of private landowners is an essential part of the Montana black-footed ferret reintroduction program. The stated goal of the Management Plan is "To promote the recovery and delisting of the black-footed ferret (*Mustela nigripes*) by reintroducing and establishing a free-ranging, cooperatively managed, black-footed ferret population in the North-central Montana Complex in a way that is compatible with existing local economies and lifestyles and to maintain a positive working relationship with the local landowners." Strategies formulated in the Management Plan avoid conflicts with landowner operations. Black-footed ferret reintroduction does not supersede or reduce the right of private landowners to manage their property. Cooperative management of black-footed ferret habitat (prairie dog colonies) on private rangelands is encouraged. However, the use of private lands is not necessary for this black-footed ferret reintroduction.

Issue 28: One commenter expressed concern about the apparent linkage of the Montana rule to the Wyoming rule. The respondent understood that each reintroduction would be evaluated separately and a separate rulemaking would be completed for each site.

Response: The Service agrees. However, to conserve printing costs during the annual updating of title 50 of the U.S. Code of Federal Regulations, provisions common to both reintroductions are combined together and stated only once rather than repeating them for each Experimental Population Area in the accompanying special rule. But, provisions specific only to the Montana Experimental Population Area are presented in section 17.84(g)(9)(ii) of the special rule.

Issue 29: Four commenters questioned the Federal government's use of Pyreone dust to treat prairie dog burrows in an attempt to manage an active sylvatic plague epizootic. One commenter supported the effort.

Response: The Service and the BLM, after reviewing data on changes occurring since 1988 in prime black-footed ferret habitat on national wildlife refuge lands and public rangelands within the Experimental Population

Area, implemented a program during June 1993 to treat fleas in prairie dog burrows on two potential black-footed ferret release sites. Data collected in 1992 showed a 52 percent reduction in total prairie dog acreage within the Reintroduction Area and elimination of three of five potential release sites as result of documented sylvatic plague. The treatment of prairie dog burrows was implemented on Federal lands as part of the Federal government's commitment to manage prairie dog populations at 1988 population levels. An environmental assessment was completed and a Finding of No Significant Impact and Record of Decision were signed by the Charles M. Russell National Wildlife Refuge Manager on May 20, 1993, and the BLM, Lewistown District Manager on May 24, 1993.

Issue 30: One commenter believed there is no documented evidence that conservation of black-footed ferrets will be promoted through reintroduction and suggested that further reintroduction be delayed until reintroductions in Wyoming are proven to be a success. An alternate position was taken by two commenters who were concerned that black-footed ferrets in the captive population may be euthanized because breeding facilities are nearing capacity, and recommended that additional black-footed ferrets be released in the wild rather than establishing another captive facility.

Response: The Service disagrees that conservation of black-footed ferrets will not be promoted through reintroduction into the wild. The Black-footed Ferret Recovery Plan was updated in 1988 to provide a more up-to-date blueprint for actions to recover the species. Among other changes, the species' recovery goal was updated to include establishment of 10 or more black-footed ferret populations, each with at least 30 breeding adults (see Issue 15).

The Service is actively pursuing these recovery goals by encouraging establishment of cooperatively developed reintroduction sites, and results from black-footed ferret reintroduction in Wyoming in 1991 and 1992 are encouraging. Delays in re-establishing black-footed ferrets in the wild would not be in the long-term interest of recovery of this species in the wild.

The Service's intent is to secure sufficient release sites so that black-footed ferrets in excess of the captive population needs can be released in the wild. The Service does not envision that the captive population will produce black-footed ferrets in excess of those needed for the reintroduction program.

scientific purposes and display, and has no plans to euthanize animals in captivity.

Issue 31: Should the Service use a 50 percent reduction in the ferret habitat rating (Biggins et. al. 1993) as a criteria for re-evaluation of the Montana reintroduction program?

Response: The Service believes that re-evaluation of the program when a 50 percent reduction in the black-footed ferret family rating has occurred is appropriate. A 50 percent reduction in the black-footed ferret habitat rating index does not mean the Reintroduction Area would not be a viable reintroduction site, only that the quality of remaining habitat and viability of the site should be reassessed. Black-footed ferret habitat in the Reintroduction Area is currently being surveyed and the black-footed ferret habitat rating index will be determined using the 1994 data. If a 50 percent reduction in black-footed ferret family rating has occurred, the viability of the site will be reevaluated prior to the scheduled 1994 release.

Issue 32: Should the reintroduction protocol section in the proposed rule be discussed in more detail? One commenter suggested it should be.

Response: The Service does not believe it is necessary to provide more detail in the special rule. The referenced section describes the anticipated release strategy and techniques that will be used. Site specific details will be modified annually prior to each year's release and will utilize information obtained from previous releases. Detailed release methods for each year's release in the Montana program will be included in a protocol prepared prior to each release.

Issue 33: One commenter suggested that the following language be added to the rule: "There will be no loss of livestock AUM's [Animal Unit Months] on BLM land in the reintroduction area due to ferret reintroduction."

Response: Part 7 of the Supplementary Information section of this rule addresses grazing on public lands, stating: "No additional grazing restrictions will be placed on BLM lands with grazing allotments in the Reintroduction Area as a result of ferret reintroduction."

Issue 34: One commenter disagreed with the statement in the rule that, "Decreased animal unit months for livestock would not benefit prairie dog populations and would not be recommended as a tool for ferret management."

Response: Grazing by livestock does not in itself adversely affect prairie dog populations. Conversely, livestock grazing can create conditions that

enhance black-tailed prairie dog populations by reducing grass cover and increasing the distance across which prairie dogs can spot and escape predators.

Issue 35: Four commenters were opposed to the money being spent on ferret reintroduction and suggested that the money could better be spent on access roads or recreation sites on the Charles M. Russell National Wildlife Refuge. Four persons suggested the reintroduction will affect the economic stability of Phillips County and did not support changes in current recreation, grazing, prairie dog shooting, hunting, or potential bentonite mining activities.

Response: The Service is responsible under the Act for recovering the black-footed ferret. Because there are no known natural wild populations, reintroductions are necessary to recover the species.

The Service disagrees that the economic stability of Phillips County will be affected as a result of the black-footed ferret reintroduction. Some increase in visitor use of the Reintroduction Area by researchers and members of the public interested in observing or photographing black-footed ferrets is anticipated when ferrets are reintroduced. The level of this increase cannot be determined nor can the consequences to the local economy, though economic impacts of increased visitor use is likely to be beneficial rather than adverse. No significant changes in recreation, grazing, prairie dog shooting, hunting, or potential mining activities have been projected. The Management Plan addresses how each of these activities will be managed within the Reintroduction Area.

Issue 36: Two commenters felt that black-footed ferrets should be given full protection under the Act as a means of conserving the long-term viability of the entire prairie dog grassland ecosystem.

Response: Although conserving the long-term viability of the entire prairie dog grassland ecosystem may be an admirable goal, the purpose of this nonessential experimental population is to implement a recovery action for the black-footed ferret. The reasons for not providing reintroduced ferrets full protection under the Act are discussed earlier in this rule.

Issue 37: One commenter suggested that more than one black-footed ferret probably died from the plague in Wyoming.

Response: To the best of the Service's knowledge, only one black-footed ferret died of sylvatic plague in Wyoming.

Issue 38: One commenter expressed support for the Baucus-Chafee Endangered Species Act reauthorization

bill. The commenter also supported changes in the Act that would include economic and social impact studies to determine the extent of adverse economic effects resulting from listing of threatened and endangered species.

Response: This rulemaking does not address reauthorization of the Act.

National Environmental Policy Act

A final environmental assessment as defined under the authority of the National Environmental Policy Act of 1969 has been prepared and is available to the public at the Service offices identified in the ADDRESSES section. This assessment formed the basis for the decision that the planned Montana black-footed ferret reintroduction is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Required Determinations

This final rule was not subject to Office of Management and Budget review under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this action and the rule contains no record-keeping requirements, as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule does not require a Federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

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Authors

The principal authors of this rule are Dennis Christopherson and Ronald Naten (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by revising the existing two entries for "Ferret, black-footed" under "MAMMALS" to read as shown below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Ferret, black-footed	<i>Mustela nigripes</i>	Western U.S.A., Western Canada.	Entire, except where listed as an experimental population below.	E	1, 3, 433, 543, 544	NA	NA
Do	do	do	U.S.A. (specific portions of Wyoming, Montana, and South Dakota).	XN	433, 543, 544	NA	17.84(g)

3. Section 17.84 is amended by revising the text of paragraph (g) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(g) Black-footed ferret (*Mustela nigripes*)

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i), (g)(9)(ii), and (g)(9)(iii) of this section are nonessential experimental populations. Each of these populations will be managed in accordance with their respective management plans.

(2) No person may take this species in the wild in the experimental population areas except as provided in paragraphs (g)(3), (4), (5), and (10) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under § 17.32 may take black-footed ferrets in the wild in the experimental population areas.

(4) Any employee or agent of the Service or appropriate State wildlife agency, who is designated for such purposes, when acting in the course of official duties, may take a black-footed ferret from the wild in the experimental population areas if such action is necessary:

- (i) For scientific purposes;
- (ii) To relocate a ferret to avoid conflict with human activities;
- (iii) To relocate a ferret that has moved outside the Reintroduction Area when removal is necessary to protect the ferret, or is requested by an affected

landowner or land manager, or whose removal is requested pursuant to paragraph (g)(12) of this section;

(iv) To relocate ferrets within the experimental population areas to improve ferret survival and recovery prospects;

(v) To relocate ferrets from the experimental population areas into other ferret reintroduction areas or captivity;

(vi) To aid a sick, injured, or orphaned animal; or

(vii) To salvage a dead specimen for scientific purposes.

(5) A person may take a ferret in the wild within the experimental population areas provided such take is incidental to, and not the purpose of, the carrying out of an otherwise lawful

activity and if such ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct. Such conduct will not be considered "knowing take" for purposes of this regulation, and the Service will not take legal action for such conduct. However, knowing take will be referred to the appropriate authorities for prosecution.

(6) Any taking pursuant to paragraphs (g)(3), (4) (vi) and (vii), and (5) of this section must be reported immediately to the appropriate Service Field Supervisor, who will determine the disposition of any live or dead specimens.

(i) Such taking in the Shirley Basin/Medicine Bow experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Cheyenne, Wyoming (telephone: 307/772-2374).

(ii) Such taking in the Conata Basin/Badlands experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Pierre, South Dakota (telephone: 605/224-8693).

(iii) Such taking in the north-central Montana experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Helena, Montana (telephone: 406/449-5225).

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any ferret or part thereof from the experimental populations taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraphs (g)(2) and (7) of this section.

(9) The sites for reintroduction of black-footed ferrets are within the historical range of the species.

(i) The Shirley Basin/Medicine Bow Management Area is shown on the attached map and will be considered the core recovery area for the species in southeastern Wyoming. The boundaries of the nonessential experimental population will be that part of Wyoming south and east of the North Platte River within Natrona, Carbon, and Albany Counties (see Wyoming map). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during

and after the first breeding season following the first year of releases will comprise the nonessential experimental population thereafter.

(ii) The Conata Basin/Badlands Reintroduction Area is shown on the attached map for South Dakota and will be considered the core recovery area for this species in southwestern South Dakota. The boundaries of the nonessential experimental population area will be north of State Highway 44 and BIA Highway 2 east of the Cheyenne River and BIA Highway 41, south of I-90, and west of State Highway 73 within Pennington, Shannon, and Jackson Counties, South Dakota. Any black-footed ferret found in the wild within these boundaries will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of black-footed ferrets in the Reintroduction Area. A black-footed ferret occurring outside the experimental population area in South Dakota would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following action if necessary:

(A) If an animal is genetically determined to have originated from the experimental population, it may be returned to the Reintroduction Area or to a captive facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan, up to nine black-footed ferrets may be taken for use in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(iii) The North-central Montana Reintroduction Area is shown on the attached map for Montana and will be considered the core recovery area for this species in north-central Montana. The boundaries of the nonessential experimental population will be those parts of Phillips and Blaine Counties, Montana, described as the area bounded on the north beginning at the northwest corner of the Fort Belknap Indian Reservation on the Milk River; east following the Milk River to the east Phillips County line; then south along said line to the Missouri River; then west along the Missouri River to the west boundary of Phillips County; then north along said county line to the west boundary of Fort Belknap Indian Reservation; then further north along said boundary to the point of origin at the Milk River. All marked ferrets found

in the wild within these boundaries prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases will thereafter comprise the nonessential experimental population. A black-footed ferret occurring outside the experimental area in Montana would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may be done in the following manner if necessary.

(A) If an animal is genetically determined to have originated from the experimental population, it would be returned to the reintroduction area or to a captive facility.

(B) If an animal is determined not to be genetically related to the experimental population, then under an existing contingency plan, up to nine ferrets may be taken for use in the captive breeding program.

(10) The reintroduced populations will be continually monitored during the life of the project, including the use of radio-telemetry and other remote sensing devices, as appropriate. All released animals will be vaccinated against diseases prevalent in mustelids, as appropriate, prior to release. Any animal which is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or the Department or their agents and given appropriate care. Such an animal may be released back to its respective reintroduction area or another authorized site as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity.

(11) The status of each experimental population will be re-evaluated within the first 5 years after the first year of release of black-footed ferrets to determine future management needs. This review will take into account the reproductive success and movement patterns of individuals released into the area, as well as the overall health of the experimental population and the prairie dog ecosystem in the above described areas. Once recovery goals are met for delisting the species, a rule will be proposed to address delisting.

(12) This 5-year evaluation will not include a re-evaluation of the "nonessential experimental" designation for these populations. The Service does not foresee any likely situation which would call for altering the nonessential experimental status of any population. Should any such

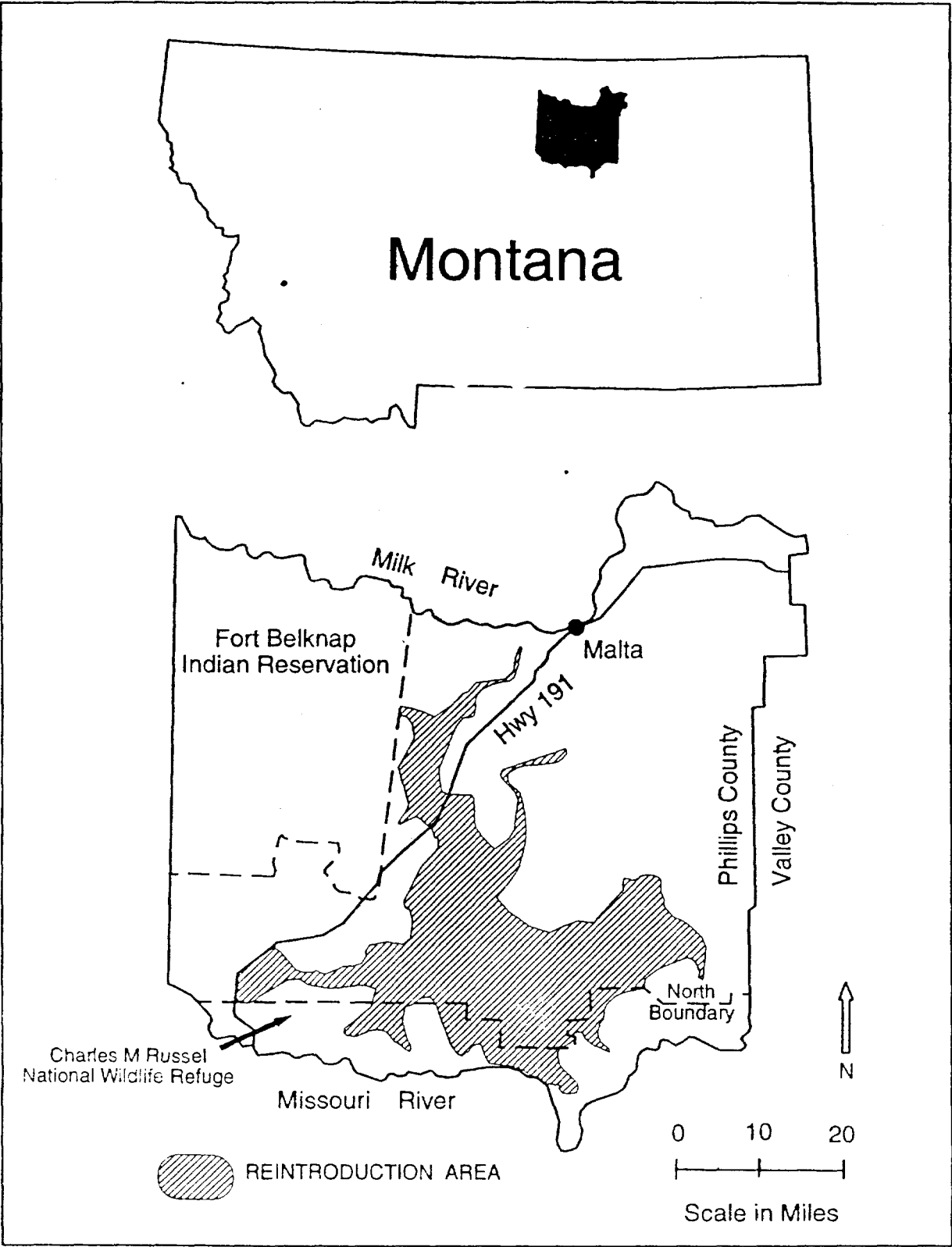
alteration prove necessary and it results in a substantial modification to black-footed ferret management on non-Federal lands, any private landowner who consented to the introduction of black-footed ferrets on his lands will be

permitted to terminate his consent and the ferrets will be, at his request, relocated pursuant to paragraph (g)(4)(iii) of this rule.

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4. Section 17.84 is amended by adding a map to follow the existing two maps at the end of paragraph (g).

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Dated: August 9, 1994.

Robert P. Davison,

*Acting Assistant Secretary, Fish, Wildlife and
Parks.*

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